son, T. & S. F. Ry. Co. v. *United States*, 225 U. S. 640. The court's inference that the summary power of imposing a fine, conferred upon the Postmaster-General by statute, was intended to preclude any recovery under the contract seems unjustified. It is a privilege accorded the Post-Office Department for the promotion of efficient service, and the penalty assessed is a liquidation of damages for the *public* inconvenience. See *Otis* v. *United States*, 24 Ct. Cl. 61, 72; *Parker* v. *United States*, 26 Ct. Cl. 344, 358. No provision of the statute can be construed as impairing the right of a bailee to recover for the owner's benefit from a converter, even where the conversion involves no wrong for which the bailee would himself be liable before such recovery. *The Winkfield*, [1902] P. 42. But the principal case may well constitute an exception to what, it is submitted, should be the general rule, for the illegal use of the mails by the party for whose benefit the action is brought is a fraud which should vitiate the right of the nominal plaintiff. *Gibson* v. *Paynter*, 4 Burr. 2298; *Orange Co. Bank* v. *Brown*, 9 Wendell (N. Y.) 85.

PROFITS À PRENDRE — RIGHT TO SELF-HELP. — The defendants had a right to cut heather on the plaintiff's estate. When the land became thickly grown with small trees so as to interfere with gathering the heather, they entered and began cutting down the trees. The plaintiff asked that they be restrained. *Held*, that the defendants be enjoined from further cutting. *Hope* v. *Osborne*, 77 J. P. 317 (Ch. Div.).

It is uncertain how far the holder of a *profit à prendre* may protect his interest by self-help. One whose property rights have been invaded may certainly in some cases take the law into his own hands, provided the amount of force used is reasonable. The victim of a private nuisance may enter upon the offender's land and forcibly abate it. *Amoskeag Mfg. Co.* v. *Goodale*, 46 N. H. 53; *Roberts* v. *Rose*, L. R. 1 Exch. 82. But if the land owner was not the original wrongdoer, notice must be given first, except in emergencies. *Jones* v. *Williams*, 11 M. & W. 176. The owner of a chattel which is wrongfully being detained from him may in general enter and retake it. *Madden* v. *Brown*, 8 N. Y. App. Div. 454, 40 N. Y. Supp. 714. But he may not enter upon the land of one who is not responsible for the chattel's being there, as where a former tenant is claiming a chattel that he left behind. *Anthony* v. *Haney*, 8 Bing. 186. The holder of an easement may remove any obstruction placed upon it by the owner of the servient tenement without making a prior request. *Quintard* v. *Bishop*, 29 Conn. 366. But if it was put there by a stranger or by the grantor of the servient owner, notice must be given. *O'Shaughnessey* v. *O'Rourke*, 36 Misc. (N. Y.) 518, 73 N. Y. Supp. 1070. Lord Coke indicated that the holder of a *profit à prendre* was justified in breaking down any serious obstruction erected by the land owner. 2 Inst. 88. So it has been held that where the lord has planted hedges a commoner may pull them up. *Mason* v. *Caesar*, 2 Mod. 65. But on the analogy of the above cases it would seem that where the landowner, as in the principal case, has been guilty of no misfeasance, but merely of a failure to do something, the holder of a *profit à prendre* should not have self-help; certainly not without prior request. Where affirmative duties are involved it would seem safer to leave all remedy to the courts.

SALES — BILL OF LADING — CARRIER'S LIABILITY UNDER AN "ORDER" BILL — FORGED BILL. — A seller, delivering two carloads of beans to the carrier, took "order" bills of lading on which the buyer was named as both consignor and consignee. By express stipulation in the bills their surrender was to be a prerequisite to delivery of the goods by the carrier. The seller retained possession of the bills as security for the price. The buyer forged other bills, indorsed them in blank, and sold them to a third person who secured delivery

on them from the defendant carrier. *Held*, that the carrier is not liable to the seller. *Nelson Grain Co.* v. *Ann Arbor R.*, 140 N. W. 486 (Mich.).

That a "straight" bill is nothing more than a contract under which delivery can be made without taking up the bill may be true. *Singer* v. *Merchants', etc. Co.*, 191 Mass. 449, 77 N. E. 882. But an "order" bill of lading by its form and frequently by express stipulation represents that it is an indispensable key to the delivery of the goods by the carrier. *Goepel* v. *Hamburg, etc. Co.*, 191 Fed. 744; *Forbes* v. *Railroad*, 133 Mass. 154. When the consignee of an "order" bill of lading, having possession of it, secures delivery of the goods without surrendering the bill, a subsequent holder of the indorsed bill can hold the carrier for conversion. *Ratzer* v. *Burlington, etc. R.*, 64 Minn. 245, 66 N. W. 988; *Chesapeake S. S. Co.* v. *Merchants' National Bank*, 102 Md. 589, 63 Atl. 113. *Cf. Ridgway Grain Co.* v. *Penna. R.*, 228 Pa. 641, 77 Atl. 1007. By general custom bills may be made out to the order of the buyer and possession of the bills retained by the seller or his agent for the purpose of preventing delivery till the price is paid. See WILLISTON, SALES, § 285. In the principal case, however, the court argues that the carrier had no notice of the right or desire on the part of the plaintiff to prevent delivery, since he was not even named on the bill of lading as consignor. Such an argument might apply to a shipment under a "straight" bill of lading. Its use here fails to observe the essential difference between "straight" and "order" bills which has been pointed out. If, under all circumstances, the courts would require the carrier to take up the "order" bill before delivering the goods, less confusion would result, and a valuable mercantile custom would be recognized and effective. The Uniform Sales Act, recently adopted by Michigan, accentuates the distinction contended for. UNIFORM SALES ACT, § 20 (2 and 3). See WILLISTON, SALES, § 281 ff. In accord with the principal case: *St. Louis, etc. R.* v. *Gilbreath*, 144 S. W. 1051 (Tex.). For further discussion of the distinction between "straight" and "order" bills of lading see 22 HARV. L. REV. 534; 23 HARV. L. REV. 146.

SALES — SALE OF GOODS ACT — NOTICE OF SHIPMENT BY SEA. — The plaintiff sold goods to the defendant F. O. B. Antwerp, the shipping point. The Sale of Goods Act, § 32 (3), provides that "unless otherwise agreed, where goods are sent by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as will enable him to insure, and if he fails, the goods shall be at his risk." No notice was given. The goods were lost uninsured, and an action is brought relying upon this section. *Held*, that the section had no application to F. O. B. sales. *Wimble* v. *Rosenberg*, 57 Sol. J. 392, 784 (K. B. Div.; aff'd Ct. App., July, 1913).

This section of the English Sale of Goods Act, followed in the American Uniform Sales Act, § 46 (3), is foreign to the common law, being adopted from the Scotch law, where the rule has long been well settled. *Arnot* v. *Stewart*, 6 Paton App. Cas. 289; *Fleet* v. *Morrison*, 16 Sess. Cas. 1122. Prior to this case there had been no English or American decision on this section. The present case seems incorrect. No reason appears for excepting F. O. B. sales from the requirements of the section. On the contrary, F. O. B. sales are the very kind in which notice is required; for in the other two kinds of sales common in England, where sea transit is involved, "C. I. F." sales (where the price covers the cost, freight, and insurance), and "ex ship" sales (where the ship is named), obviously notice is immaterial. Moreover, a sale F. O. B. place of shipment is equivalent to an ordinary shipment. To except such a sale from the section is practically cancelling the section. The requirement of notice is reasonable. Title has passed to the buyer, and he should be given the opportunity to insure the goods. The aversion shared in by many courts to recognizing that a statute changes the common law seems here to have been carried to extreme lengths.